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Supreme Court of the United States

OCTOBER TERM, 1925.

No. 199.

HAROLD TAYLOR, TRUSTEE UNDER THE WILL OF MARY E. ERSKINE, DECEASED, AND WILBUR ERSKINE,
Petitioners,

v.

HARRY W. VOSS, TRUSTEE OF THE ESTATE OF WILBUR ERSKINE, BANKRUPT,
Respondent.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

HAROLD TAYLOR,
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INDEX.

	Page
Advisement, cause taken under	17
Amended petition of Trustee in Bankruptcy	3, 11, 13
Answer to amended petition	4, 14
Appearance of counsel before Referee	4
Appendix	46
Argument	22
Assignment of errors	18
Bankrupt, Wilbur Erskine adjudged a	12
Bankruptcy, Trustee in, named	12
Bankruptcy, Order of Referee in	5, 11, 13, 14
Bankruptcy, Order of Referee in, approved	5
Cases sustaining jurisdiction	10
Cause taken under advisement	17
Certiorari, Petition for Writ of	18
Certiorari, Writ of, ordered	17
Date of judgment to be reviewed	2
Dismiss, Motion to	16
Dismiss, Motion to, filed	15
Dismiss, Motion to, not directly ruled on	8
Errors relied on	18
Extention of time for filing petition for rehearing	17

Page

Filing of opinion in C. C. A. 17

Grounds on which jurisdiction invoked 2

Hearing on petition to review and revise 17

Indiana, Statutes of 49, 50, 51, 52, 53

Judgment of C. C. A. 2

Motion to dismiss filed 15, 16
Motion to extend time for filing petition for rehearing 17
Motion to extent time for filing petition for rehearing granted 17

Opinion of C. C. A. on hearing below 1
Opinion of C. C. A. filed 17
Opinion of C. C. A., report of 1
Order of D. C. reversed 11, 17
Order of Referee in Bankruptcy 5, 11, 13, 14
Order of D. C. approving order of referee 5
Order of C. C. A. making part of petition to review and revise certain petitions and orders 17
Order being reviewed in S. C. 2
Overruling of petition for rehearing 18

Petition to review order of Referee 5, 15
Petition for Writ of Certiorari 18
Petition for Writ of Certiorari granted 18

Page

Petition to Review and Revise 6, 15
Petition for Rehearing 18
Petition to Review and Revise, hearing on 17

Record filed with petition, return to writ 18
Rehearing, Petition for 18
Rehearing, Petition for, overruled 18
Report of Opinion in C. C. A. 1
Ruling on Specific Claims 3

Specific claims advanced below 3
Statement of the case 11
Statutes of United States 46, 47, 48, 53, 54
Statutes of Indiana 49, 50, 51, 52, 53
Statutory basis of jurisdiction 9

Time for filing petition for rehearing extended 17
Trustee's Amended Petition 3, 11, 13

United States, Statutes of 46, 47, 48, 53, 54

Will of Mary E. Erskine probated 13
Writ of Certiorai, Petition for 18
Writ of Certiorari ordered 11, 18

TABLE OF CASES.

	Page
Andrews v. Partridge, 228 U. S. 479	10
Axle, In re L. M. Co., 3 Fed. (2nd) 581	32, 33
Baltimore, In re Pearl Hominy Co., 5 Fed. (2nd) 553	33
Bardes v. Hawarden Bank, 178 U. S. 524	26
Bear v. Liberty National Bank of Roanoke, Va., 285 Fed. 703, also 706	32
Blanke Mfg. & Supply Co. v. Craig, 287 Fed. 345	32
Clarke v. Larremore, 188 U. S. 486	10
Consumers' Packing Co., In re, 268 Fed. 198	31
Cowen Co., In re Geo. W., 289 Fed. 192	32
Craig, In re Lumber Co., 266 Fed. 692	25, 35
Duncan v. Johnson & Co., 3 Fed. (2 nd) 422	32, 33
Duryea Power Co. v. Sternbergh, 218 U. S. 299	36
Eppley v. Baylor, 293 Fed. 306	32, 33
Everett v. Judson, 228 U. S. 474	10
Feder v. Goetz, 264 Fed. 619	32
First Natl. Bank v. Chicago, etc., Trust Co., 198 U. S. 280	26
Frederick v. Silverman, 250 Fed. 75	34
Friend, In re, 134 Fed. 778	23
Ganzon v. Compania, 245 U. S. 86	36
Glove Corp., In re B. & B., 279 Fed. 372	32, 33

Page

Goldstein v. Johnson, 3 Fed. (2nd) 228 33
Griffin v. Lenhart, 266 Fed. 675, also 671 ..... 25, 32
Grotton Laundry Service, Inc., In re, 5 Fed. (2nd) 63 .. 33

Hanover Natl. Bank v. Moyses, 186 U. S. 181, 190 40
Harlin, Gdn., v. American Trust Co., Trustee in Bankruptcy, 67 Ind. App. 213 ..... 21, 24, 25, 39, 41
Hays, In re, 181 Fed. 674, 676 ..... 38, 40
Henkin v. Fousek, 267 Fed. 557 36
Herbert & Co., In re, 263 Fed. 351 32
Higgins v. Ormsby, 156 Ind. 82 44
Holden v. Stratton, 191 U. S. 115 10
Horton v. Mendelsohn, 249 Fed. 185 34

Loving, Matter of, 224 U. S. 183 ..... 25, 37

Marine Natl. Bank v. Swigert, 262 Fed. 254 39
Mohler v. Morris, 291 Fed. 571 32

National Discount Co., 272 Fed. 570 ..... 32, 33

Parker, In re, 283 Fed. 404 33
Peoples Natl. Bank of Strasburg, Va., v. Green, 296 Fed. 294 ..... 32, 32
Porter v. Lazear, 109 U. S. 84 38

Rasmussen, In re, 287 Fed. 860 32
Reilly, In re, 258 Fed. 121 34
Richardson Co., In re A. E., 3 Fed. (2nd) 600 34

Page

Stokes v. Sedberry, 275 Fed. 894 32

Thomas v. Woods, 173 Fed. 585 ..... 39, 40
Thompson, In re, 264 Fed. 913 35
Toole, In re, 270 Fed. 195 32

Voss, Trustee, v. Taylor, Trustee, 1 Fed. (2nd) 149 1

Weidhorn v. Levy, Trustee, 253 U. S. 268 10
Western Rope & Mfg. Co., In re, 298 Fed. 926 32
White v. Stump, 266 U. S. 310 39
Wood, In re, 278 Fed. 355 32

STATUTES.

United States.

Act of January 28, 1915, chapt. 22, sec. 4; 38 Stats. at L. 804, as amended by Act of September 6, 1916, chapt. 448, sec. 3; 39 Stats. at L. 727; U. S. Comp. Stats. sec. 1120a; (Jud. Code, Sec. 128, amended) 9

Act February 13, 1925, c. 229, sec. 14; 43 Stats. at L. 941 ..... 9, 10

Act September 6, 1916, c. 448, sec. 4; 39 Stats. at L. 727; U. S. Comp. Stats. sec. 1649a 8, 18, 19, 23, 27, 28, 29, 31, 36

Acts July 1, 1898, c. 541, sec. 24a; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608 ..... 7, 19, 23, 27, 28, 29, 30

Act of July 1, 1898, c. 541, sec. 24b; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608 ..... 7, 19, 23, 27, 28, 29, 30, 34

Act of July 1, 1898, c. 541, sec. 25a; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608 ..... 29, 30, 34, 35

Act of July 1, 1898, c. 541, sec. 70a; 30 Stats. at L. 565; amended February 5, 1903, c. 487, sec. 16; 32 Stats. at L. 800; U. S. Comp. Stats. 9654 ..... 40, 41, 43, 44

Act of February 13, 1911, c. 47, sec. 1; 36 Stats at L. 901; U. S. Comp. Stats., sec. 1656 26

Indiana.

Sec. 3013, Burns' Ind. Ann. Stats. 1914; Sec. 2639, R. S. 1881 38

Sec. 3014, Burns' Ind. Ann. Stats. 1914; Sec. 2640, R. S. 1881 38

Sec. 3029, Burns' Ind. Ann. Stats. 1914; Sec. 2652, R. S. 1881 50
Sec. 3037, Burns' Ind. Ann. Stats. 1914; Sec. 2660, R. S. 1881 ..... 38, 43
Sec. 2864, Burns' Ind. Ann. Stats. 1914; Sec. 2502, R. S. 1881 51
Sec. 3052, Burns' Ind. Ann. Stats. 1914; Sec. 2669, R. S. 1881 39
Sec. 3053, Burns' Ind. Ann. Stats. 1914; Sec. 2670, R. S. 1881 52
Sec. 3054, Burns' Ind. Ann. Stats. 1914; Sec. 2671, R. S. 1881 52
Sec. 3055, Burns' Ind. Ann. Stats. 1914; Sec. 2672, R. S. 1881 53

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ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

The opinion of the Circuit Court of Appeals for the Seventh Circuit, refusing to dismiss the petition of the Trustee in Bankruptcy to review and revise holding that the petition to review should be treated as though it were an appeal, and reversing the United States District Court for the District of Indiana, is found at pages 30, 31, 32, 33, 34, 35 and 36 of the Record and is reported in 1 Fed. (2nd) 149.

JUDGMENT BELOW.

The judgment to be reviewed is a judgment of the United States Circuit Court of Appeals for the Seventh Circuit (R. 37), rendered June 20, 1924, which reversed an order of the United States District Court for the District of Indiana (R. 14), affirming an order and judgment of the Referee in Bankruptcy (R., 25, 26), which determined the wife's interest in the real estate of the bankrupt husband at the time of filing the petition and adjudication in bankruptcy to be a one-fifth interest, and giving judgment to said Taylor, Trustee under the will of the wife, against said Voss, Trustee in Bankruptcy, for $7,374.00, that being one-fifth of the proceeds of the sales of real estate made by said Trustee in Bankruptcy, all of the parties having joined in the sales and deeds of conveyance in order to secure better sales and better prices. The case was before the Circuit Court of Appeals upon an original petition to review and revise. There was no appeal or writ of error.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

1. Date of Judgment to Be Reviewed.

The judgment to be reviewed was rendered June 20, 1924, by the United States Circuit Court of Appeals for the Seventh Circuit (R. 37), which re-

versed an order of the District Court of the United States for the District of Indiana (R. 14), affirming an order of the Referee in Bankruptcy. (R., 25, 26.)

2. Specific Claims Advanced and Rulings Made.

The action is a controversy arising in bankruptcy proceedings, an adversary proceeding, brought by said Voss, Trustee of Wilbur Erskine, Bankrupt, against said Taylor, Trustee under the last will of Mary E. Erskine, deceased wife of said Wilbur Erskine, and Wilbur Erskine as surviving husband.

The action was begun by the filing of an amended petition May 27, 1922, before the Hon. Charles A. Burnett, Referee in Bankruptcy, to which said Taylor, Trustee, made voluntary appearance to give the court jurisdiction, under and pursuant to an agreement, by which the question of the wife's interest, and quantum thereof, in the real estate of her bankrupt husband, was submitted to the court for adjudication.

The amended petition alleged that the bankrupt owned real estate of the value of more than $20,000.00; that he had a wife alive and living with him at the time of filing the petition and of the adjudication in bankruptcy, and that she died subsequent to the appointment of the Trustee in Bankruptcy, further alleging that a question had arisen as to

title; alleging that neither the wife, nor her Trustee under her said last will, nor her surviving husband had any interest in said real estate, and asking that his title as Trustee in Bankruptcy be quieted to all of said real estate (R., 22).

Under date of June 24, 1922, said Taylor, Trustee under the will, and said Wilbur Erskine, surviving husband, appeared and filed their answer to said amended petition before Hon. Charles A. Burnett, Referee in Bankruptcy (R. 23, 24); said answer alleges the ownership of the real estate in the bankrupt at the date of the filing of petition and of the adjudication in bankruptcy; that at said date and for many years prior the bankrupt had a wife, Mary E. Erskine, alive and living with him, and that they were residents of Vanderburgh County, Indiana; that his said wife died testate on March 21, 1922; that by said will all of her estate, real and personal, was devised to said Taylor, Trustee; that said wife was survived by said Wilbur Erskine, the bankrupt; that the wife had never parted with her interest in said real estate; that upon the adjudication December 20, 1921, the wife's interest became a vested interest in and to the real estate then owned by her said husband, under and in accordance with the laws of the State of Indiana and the Federal Bankrupcy Act, and that she had never parted with, incumbered, transferred or conveyed in any way her interest as the wife of said Erskine, in said real estate; and asking the court to determine

the interest of the wife, and for all other proper relief (R., 23, 24).

For the purpose of the submission, stipulations as to facts were made (R., 4, 5, 6).

The trial before the Referee resulted in finding and judgment, rendered March 14, 1923, in favor of the petitioner herein, said Harold Taylor, Trustee under the will of said Mary E. Erskine, deceased (R., 11, 12), finding that at the time of the adjudication in bankruptcy, the bankrupt had a wife living, said Mary E. Erskine, who died testate on the 21st day of March, 1922; that said Harold Taylor was named Trustee under the will of said decedent, and is vested with all the wife's interest in the real estate; that said Taylor, as such Trustee under the will of the wife, was entitled to one-fifth of the proceeds of the sale of the real estate made by said Voss, Trustee in Bankruptcy, pursuant to the agreement made between the said Trustee in Bankruptcy, the Trustee under the will of the wife, and said Erskine as the surviving husband.

March 21, 1923, the Trustee in Bankruptcy filed a petition for review of the order of the Referee (R., 24, 25), and the petition and papers were transmitted and filed in the District Court under the same date (R., 13, 14).

April 24, 1923, the petition for review was heard before the District Court, resulting in an order and judgment of the District Court affirming the order of the Referee. No appeal or writ of error was

en, asked for or granted from the order of the trict Court.

June 18, 1923, said Voss, Trustee in Bankruptcy, l in the United States Circuit Court of Appeals the Seventh Circuit his original petition to re- v and revise (R., 1, 2, 3, 4), with exhibits: "A," ulation of facts for submission before the eree (R. 4, 5, 6), copy of will of deceased wife 6, 7, 8, 9); "B," agreement between parties to mit question of wife's interest to court, to join in ng and conveying property, trustee to retain one- n of proceeds pending final decision of court; duplicate," order of referee; "C duplicate," ref- e's report transmitting petition and papers to trict Court; "D," order of the District Court.

The Referee in Bankruptcy and the District rt in approving the order of the Referee in kruptcy held that the one-fifth inchoate interest he wife, Mary E. Erskine, in the real estate be- ie vested in her as of the date of adjudication of kruptcy, and that said one-fifth interest passed Harold Taylor, her trustee, by the terms of her .

The Trustee in Bankruptcy took the question to United States Circuit Court of Appeals for the enth Circuit by petition to review and revise the er of the District Court. There was no appeal or t of error asked for or taken. The petitioners

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herein, respondents in the Circuit Court of Appeals, moved to dismiss the petition to review and revise on the ground that this was a controversy arising in bankruptcy proceedings, reviewable only under Section 24a of the Bankruptcy Act, and not reviewable by petition to review and revise, as under Section 24b of the Bankruptcy Act, and answered on the merits, alleging that the wife's interest vested in her upon adjudication; that she had never parted with said interest, and, that her interest had passed to said Taylor, Trustee under her will. (R., 17, 18, 19.)

The specific claims advanced in the Circuit Court of Appeals by the petitioners in this court may be stated under two heads:

(1) That the Circuit Court of Appeals had no jurisdiction in the matter, for the reason that the petitioner in that court, respondent here, had attempted to present to the Circuit Court of Appeals by original petition to review and revise, under section 24b of the Bankruptcy Act, a controversy arising in bankruptcy; whereas the bankruptcy act provides that such controversies can be reviewed only by appeal under Section 24a of the Bankruptcy Act, and, that no appeal had been taken; and

(2) That the inchoate interest of Mary E. Erskine in the real estate owned by her husband, the bankrupt, at the time of the filing of the petition in bankruptcy and date of adjudication, became vested

in her by operation of law as of the date of the adjudication, and thereupon became a part of her separate estate and could not be divested except by some act of her own; that not having been so divested by her within her lifetime it passed by the terms of her will to said Taylor, as trustee.

The Circuit Court of Appeals in passing on your petitioners' motion to dismiss the trustee in bankruptcy's petition to review and revise, in effect denying the motion to dismiss, held that the trustee in bankruptcy had chosen the wrong remedy; that

> "The proceeding in the District Court was not a summary proceeding, but was a plenary proceeding heard and decided in that court, and consent of the parties could not affect the method of procedure to procure a review.
>
> "For the above reasons, this case would have to be dismissed from this court, except for the provisions of Section 4 of an Act of September 6, 1916 (39 U. S. Stats. at L. p. 727; Sec. 1649a U. S. Compiled Stats. 1916)."

The Circuit Court of Appeals, in its opinion held, and in effect holds by its order, that the above section applies to and includes petitions to review and revise, when an appeal would be the correct remedy; and says "especially where, as here, the record before us is in all respects as it would be on appeal. We shall consider the matter as here on appeal."

Your petitioners' motion to dismiss the petition to review and revise was therefore impliedly passed upon and denied by the opinion and order of the Circuit Court of Appeals.

The ruling of the Circuit Court of Appeals on these petitioners' second contention, as disclosed by the opinion of the court, was that on her death all of the interest of Mary E. Erskine in the real estate which might have come to her at the date of adjudication was extinguished and that therefore no interest passed under her will to said Taylor, her trustee. (R., 36.)

3. Statutory Basis of Jurisdiction.

This cause is here on writ of certiorari.

The Act of January 28, 1915, Chapt. 22, Sec. IV, 30 Stats. at L. 804, amended September 6, 1916, Chapt. 448, Sec. 33, 39 Stats. at L. 727, U. S. Comp. Stats., Sec. 1120a, provides that a decree of the Circuit Court of Appeals in proceedings under the Bankruptcy Act, or in controversies arising thereunder, shall be final, save only that it shall be competent for the Supreme Court of the United States to require by certiorari on petition of a party thereto that the proceeding, cause or controversy be certified to it for review with the same power and authority as if taken there by appeal or writ of error.

(While this act as amended was repealed by the Act of February 13, 1925, Chapt. 229, Sec. 13, 43 Stats. at L. 941, Section 14 of the repealing Act provides that it shall not affect the right to review or mode or time for exercising same as regards any judgment or decree entered prior to the time the act

takes effect. *Said Section 14 provides that the* act shall take effect three months after its approval.

The judgment herein sought to be reviewed was rendered by the Circuit Court of Appeals for the Seventh Circuit on June 20, 1924, and prior to February 13, 1925, the day on which the repealing act was approved.) Above statutes, and all Federal and State Statutes referred to, are quoted at length in the Appendix hereto, pages 46-54, inclusive.

4. Cases Sustaining Jurisdiction.

A decision of a Circuit Court of Appeals in a case taken to that court on petition to review and revise any order or ruling in bankruptcy proceedings is reviewable in the Supreme Court of the United States on writ of certiorari.

Holden v. Stratton, 191 U. S. 115.
Andrews v. Partridge, 228 U. S. 479;

Rulings of Circuit Courts of Appeal on petitions to review and revise in bankruptcy matters have been reviewed by certiorari in the Supreme Court of the United States in

Andrews v. Partridge, 228 U. S. 479;
Everett v. Judson, 228 U. S. 474;
Clarke v. Larremore, 188 U. S. 486;
Weidhorn v. Levy, Trustee, 253 U. S. 268.

STATEMENT OF THE CASE.

This is an adversary proceeding in bankruptcy begun by the filing by Voss, Trustee in Bankruptcy, of his amended verified petition (R., 22, 23), before the Referee, alleging that Harold Taylor, Trustee under the will of Mary E. Erskine, deceased, and Wilbur Erskine, as surviving husband, claimed an interest in the proceeds of the sale of the real estate, in the hands of the Trustee, adverse to the Trustee, and asking that title to same be quieted in Voss, Trustee in Bankruptcy. Taylor, Trustee, and Wilbur Erskine voluntarily appeared before the Referee. The Referee's order was that one-fifth of the proceeds should be paid to Taylor, Trustee under the will of Mary E. Erskine (R., 12). On petition to review, the order of the Referee was approved by the United States District Court for the District of Indiana (R., 14). This order was sought to be reviewed in the United tSates Circuit Court of Appeals for the Seventh Circuit by original petition to review and revise filed therein on June 18, 1923 (R., 6). Petitioners herein moved to dismiss and answered on the merits. By its order of June 20, 1924 (R. 37), the judgment of the District Court of the United States for the District of Indiana was reversed by the United States Circuit Court of Appeals for the Seventh Circuit. On March 2, 1925, petitioners' petition for writ of certiorari was granted by this court (R., 53).

For the purposes of the hearing before the Referee in Bankruptcy the parties made certain stipulations. (R., 4, 5, 6.) Stipulations and facts shown by the record are:

On December 20, 1921, Wilbur Erskine was adjudged a bankrupt in the District Court of the United States for the District of Indiana (R., 4), on his petition filed in said court December 19, 1921.

On said dates, and for many years prior thereto, said bankrupt lived with his wife, Mary E. Erskine, who was a first wife with children (R., 5). At said times said Wilbur Erskine was the owner of real estate of a value in excess of $20,000 located in Vanderburg County, State of Indiana, of which county and state said bankrupt and his said wife were residents.

On February 25, 1922, Harry W. Voss was duly chosen, named and qualified as trustee for said bankrupt (R., 5).

That Mary E. Erskine, wife of said bankrupt, died testate on March 21, 1922, leaving surviving her the bankrupt and their two children (R., 5).

The said Mary E. Erskine had never joined in any conveyance of the real estate herein above referred to, had not joined the bankrupt in his petition in bankruptcy and had not filed any suit in partition, or otherwise, to have her interest in said real estate set off to her (R., 6).

That March 24, 1921, the last will of said bankrupt's wife was duly probated in the Probate Court of said Vanderburgh County, Indiana, by the terms of which she bequeathed and devised to said Harold Taylor, Trustee, in trust, all of her estate, real and personal. (R., 6, 7, 8 and 9.)

As there was a question as to the right of the Trustee in Bankruptcy to give complete title, including the interest of the wife, in the real estate of the bankrupt, in order to give such complete title to any purchaser, an agreement was entered into on June 24, 1922, by Harry W. Voss, Trustee in Bankruptcy, Wilbur Erskine and Harold Taylor, Trustee under the will of Mary E. Erskine, deceased, by the terms of which it was agreed that all parties would join in conveying any of the real estate sold by the trustee in bankruptcy, and in order to protect any interest therein of Harold Taylor, trustee under the will of Mary E. Erskine, deceased, said trustee in bankruptcy agreed to hold and keep an amount not less than one-fifth of the proceeds of any sale or sales of said real estate, pending decision by the courts, provision for submitting the question to the court being included in the agreement. (R., 10-11.)

By the finding and order of Charles A. Burnett, Referee in Bankruptcy, which order was made on March 14, 1923 (R., 11-12), it appears that on May 27, 1922, Harry W. Voss, Trustee in Bankruptcy,

filed his amended verified petition, setting forth the value of the herein before mentioned real estate, showing that said Harold Taylor, Trustee, and Wilbur Erskine claimed an interest in said real estate, and denying such claims (R., 11-12).

On June 26, 1922, said Wilbur Erskine and Harold Taylor, Trustee, answered said amended petition setting up the wife's interest in the bankrupt's real estate under the Bankruptcy Act and the Statutes of Indiana at date of adjudication, and asked that the court fix the interest in said real estate owned by said Mary E. Erskine at the time of her death (R., 12). Petition of Harry E. Voss, Trustee in Bankruptcy, appears in the record at pages 22 and 23. (The said answer of your petitioners appears R., 23, 24.)

March 14, 1923, the Referee rendered judgment in favor of said Taylor, Trustee under the will, and ordered: That the said Harry W. Voss, Trustee in Bankruptcy, take nothing by his petition; that Harold Taylor, as Trustee under the will of Mary E. Erskine, deceased, was entitled to one-fifth of the proceeds of the sales of said real estate under the agreement herein before mentioned, and that said Harry W. Voss, Trustee in Bankruptcy, pay to Harold Taylor, Trustee, under the will of Mary E. Erskine, the sum of $7,374.00 (R., 11, 12).

A petition for review of such order by the District Court was filed with the Referee in Bankruptcy by Harry W. Voss, said Trustee in Bankruptcy, and the petition to review was certified to

the District Court of the United States for the District of Indiana on March 21, 1923 (R., 13-14). The order of the Referee in Bankruptcy, Charles A. Burnett, appears in the record at pages 25, 26 and 27.

Thereafter, on April 24, 1923, in the District Court of the United States for the District of Indiana, the said petition of Harry W. Voss, Trustee in Bankruptcy, for review of Referee's finding, was denied and the finding of the Referee in Bankruptcy approved (R., 14).

And thereafter, on June 18, 1923, said Voss, Trustee in Bankruptcy, as petitioner, appeared by counsel and filed in the United States Circuit Court of Appeals for the Seventh Circuit his certain petition to review and revise the order of the District Court, with certain exhibits "A", "B", "C" and "D" (R., b 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15).

Seasonably, on July 7, 1923, these petitioners, respondents below, appeared by counsel and filed their motion to dismiss said petition to review and revise, and stated as the grounds for such motion: (1) That no appeal had been asked for, granted or taken, and that the time for so doing was past; (2) that the question presented was a controversy arising in bankruptcy proceedings and reviewable only by appeal or writ of error and not by petition to review and revise; (3) that said petition was not filed within a reasonable time after entry of order in the District Court; (4) that petition did not suf-

ficiently or definitely state the matter of law sought to be reviewed; (5) that the petition did not correctly state the matter of law sought to be reviewed; (6) specifications of inaccuracies in statement of question; (7) that petition does not show that petitioner was injured or damaged; (8) that the inchoate interest of Mary E. Erskine in the real estate of her husband became a vested interest at the date of adjudication of bankruptcy; (9) that under the Bankruptcy Law and the statutes of Indiana the interest of Mary E. Erskine, the then living wife of the bankrupt, became an absolute estate, her separate property and did not pass to the trustee in bankruptcy; and (10) that by said law and statutes the inchoate interest of Mary E. Erskine became vested, on December 20, 1921, date of adjudication of bankruptcy, and at her death on March 21, 1922, said interest passed to Harold Taylor, Trustee, under her will.

The motion to dismiss the petition to review, of which the above is a digest, appears in the record. (R., 17, 18, 19.)

On September 11, 1923, said Voss, Trustee in Bankruptcy, filed in the Circuit Court of Appeals his petition asking an order of court to correct the record by the addition thereto of the Trustee's amended petition and certain other papers filed in the proceedings before the Referee in Bankruptcy, attaching certified copies of such papers to the petition. (R., 21.)

And on the same day, September 11, 1923, it was ordered by the United States Circuit Court of Appeals for the Seventh Circuit that, (1) the trustee's amended petition, (2) answer of Wilbur Erskine and Harold Taylor, Trustee, and (3) petition for review and assignment of errors (filed in the proceedings before the Referee) be made part of said petition to review and revise subject to motion to dismiss (R., 27-28).

The hearing in the Circuit Court of Appeals, on the petition to review and revise was set for Tuesday, January 8, 1924 (R., 28), and on that day parties were heard by counsel and the cause was taken under advisement (R., 29).

On June 20, 1924, the opinion of the United States Circuit Court of Appeals for the Seventh Circuit was filed in the office of the Clerk of that court (R., 30), and the opinion appears in the record (R., 30, 31, 32, 33, 34, 35 and 36).

On the same day it was ordered, adjudged and decreed that the order of the District Court be, and the same was, thereby reversed, and cause remanded (R., 37).

Thereafter, on July 3, 1924, the time for filing a petition for rehearing was extended fifteen (15) days from the time allowed by the rules of the court (R., 37), and to August 8, 1924 (R., 38).

On August 8, 1924, and within the time allowed by the court for filing the same, your petitioners, respondents below, duly filed in the Circuit Court of Appeals their petition for rehearing (R., 38). The petition for rehearing appears in the record (R., 39 to 51, both inclusive).

August 15, 1925, the Circuit Court of Appeals denied the petition for rehearing (R., 52).

March 2, 1925, this court granted petitioners' petition for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit (filed in this court November 10, 1924), the record already on file as an exhibit to the petition to stand as a return to the writ (R., 53).

ERRORS RELIED ON.

1. That the Circuit Court of Appeals erred in holding that the petition to review should not be dismissed because of the provisions of Section 4 of the Act of September 6, 1916 (39 U. S. Stats. at L., p. 727; Section 1649a, U. S. Compiled Stats. 1916).

2. That said Section 4 of the Act of September 6, 1916 (39 U. S. Stats. at L., p. 727; Sec. 1649a, U. S. Compiled Stats. 1916) is only intended to be corrective as to mistakes made in the two procedures named under the judicial code, namely: (a) writs of error, which is the procedure to be followed in obtaining appellate review in lawsuits; and (b) appeal, which is the procedure providing for obtaining

appellate review in equity procedure under the judicial code; that said Section 4 can not, by implication or judicial construction, be applied to statutory proceedings such as the petition to review and revise, under Section 24b of the bankruptcy act, and confined strictly to bankruptcy proceedings, and not applicable to controversies arising in bankruptcy, such as here involved, and which are reviewable only by appeal, under Section 24a of the bankruptcy act; and that the Circuit Court of Appeals was in error in construing said section to apply to petitions to review under Section 24b of the bankruptcy act.

3. That such ruling and decision of the Circuit Court of Appeals is in conflict with and contrary to ruling precedents of the Supreme Court of the United States applicable thereto, and in conflict with and contrary to the decisions of the United States Circuit Court of Appeals of other circuits.

4. That such ruling and decision of the Circuit Court of Appeals, if not in conflict with ruling decisions of the Supreme Court, is a new question never directly passed upon by this honorable court, and that a direct ruling by the Supreme Court is necessary to avoid conflicting decisions and rules of practice in the courts in different circuits of the United States.

5. That the Circuit Court of Appeals erred in overruling petitioners' motion to dismiss the trustee's petition to review and revise.

6. That the Circuit Court of Appeals erred in reversing the District Court.

7. That it was error to hold and decide that the rights of the wife in the real estate owned by the bankrupt did not vest in her as of the date of adjudication.

8. That it was error to hold and decide that upon the wife's death (subsequent to adjudication in bankruptcy and appointment and qualification of the trustee in bankruptcy) all her rights in this property were extinguished, and that no interest in the property passed to her trustee, in effect thus holding and deciding that no rights vested in the wife upon the adjudication, and that there was no interest in the property, therefore, to go to her estate, or to her husband surviving.

9. That the decision is in conflict with the decision of this honorable court, holding that under the bankruptcy act the wife's inchoate interest in her bankrupt husband's real estate does not pass to the trustee in bankruptcy and forms no part of the bankrupt's estate.

10. That the decision of the Circuit Court of Appeals is in conflict with ruling decisions of the United States Circuit Courts of Appeal in other circuits, holding and deciding that the wife's inchoate interest vests absolutely in her by operation of law as of date of the adjudication.

11. The decision of the Circuit Court of Appeals is in direct conflict with and ignores the ruling case in Indiana of *Harlin, Guardian, etc., v. American Trust Co., Trustee in Bankruptcy*, 67 Ind. App. 213, presenting this precise question, construing the Indiana statutes and declaring the wife's inchoate interest becomes vested in her as of date of the adjudication in bankruptcy and becomes part of her separate estate.

ARGUMENT.

The judgment to be reviewed is the judgment and decree of the Circuit Court of Appeals for the Seventh Circuit, reversing the order of the District Court of the United States for the District of Indiana, the order of the District Court having been to confirm the ruling and order of the Referee in Bankruptcy, holding that upon adjudication in bankruptcy of the husband, the wife then living and who was living with the husband, bankrupt, at the date of filing of the petition, adjudication and appointment of trustee, had become vested with a one-fifth interest in the real estate owned by her said husband, bankrupt, under and in accordance with the laws of the State of Indiana and the Federal bankruptcy act, and that said interest went to said Harold Taylor, as trustee under the will of said Mary E. Erskine, deceased, finding that the real estate had all been sold under an agreement, and the deeds joined in by said Taylor, Trustee, and by said Erskine, and directing the payment of her one-fifth interest to said Taylor, trustee, in the sum of $7,374.00.

The case was brought before the Circuit Court of Appeals for the Seventh Circuit upon petition of Voss, Trustee in Bankruptcy, to Review and Revise the order of the United States District Court.

Your petitioners, respondents below, seasonably filed motion to dismiss the petition to review and revise on the ground that this was an action arising in bankruptcy proceedings and could be brought to the Circuit Court of Appeals only on appeal under Section 24a of the Bankruptcy Act, whereas, the petition to review and revise was brought under Section 24b of the Bankruptcy Act.

It was conceded in the opinion of the Circuit Court of Appeals below that the case was not properly brought up to the Circuit Court of Appeals; that the petition to review and revise was improper procedure, and that the case should have been brought up upon appeal under Section 24a, and that the case would have to be dismissed, except for the provisions of Section 4 of an Act of September 6, 1916; 39 U. S. Stats. at L. 727; Sec. 1649a U. S. Comp. Stats. 1916.

The distinction between proceedings in bankruptcy and controversy in law and in equity, arising in the course of bankruptcy proceedings, briefly spoken of as controversies arising in bankruptcy proceedings, is clearly stated in the decision of the Circuit Court of Appeals for the Seventh Circuit, *In re Friend*, 134 Fed. 778, Opinion by Baker, J.:

> "That Section 23 * * * establishes a clear distinction between 'proceedings in bankruptcy' and 'controversies at law and in equity arising in the course of bankruptcy proceedings'; the former, broadly speaking, covering questions between the alleged bank-

courts have jurisdiction. The District Court did not have jurisdiction for the purpose of making partition of the real estate".

Citing:

Bardes v. Hawarden Bank, 178 U. S. 524;
First Natl. Bank, etc. v. Chicago, etc., Trust Co., 198 U. S. 280.

The Petition to Review and Revise Should Have Been Dismissed by the Circuit Court of Appeals for Want of Jurisdiction.

Of the errors relied on, numbers 1 to 5 inclusive, are on the subject of improper practice and are argued together.

The Circuit Court of Appeals in its opinion used the following language: "Where, as here, the record before us is in all respects the same as it would be on appeal." In so assuming the Circuit Court of Appeals erred both as to the record being the same, also as to it correcting the error in procedure.

In an appeal, there would be an order of the Circuit Court, or of the District Court, allowing an appeal, and a copy of the complete record of the District Court, duly certified to by the clerk of that court, under the seal of that court. Act of February 13, 1911, Chap. 47, Sec. 1; 36 Stat. at L. 901; U. S. Comp. S. Sec. 1656. Appendix 53.

In the instant case there is no such order of either court and no such certified transcript of the record.

This case came to the Circuit Court of Appeals on an original petition to review and revise, filed June 18, 1923, and the only paper filed in that court was said original petition, and accompanying exhibits. These exhibits did not constitute a transcript.

A petition to review and revise, resting as it does on whatever papers the petitioner chooses to file in the reviewing court, can not, under any construction, constitute a record on appeal, as required by Section 1656, U. S. Comp. S., cited *supra*. Pursuant to a motion, the court, on September 11, 1923, ordered that certain copies of portions of the record be made parts of the petition to review and revise. But the only thing filed in the office of the clerk of the Circuit Court of Appeals was a petition to review and revise, with certain exhibits. No transcript, no record was ever filed.

An appeal or a writ of error is before a reviewing court on the record of the court below. In the case of a petition to review and revise, the record is not taken to the appellate court.

The Circuit Court of Appeals erred in assuming, and in so stating in its opinion, that, "where, as here, (on petition to review and revise) the record before us is in all respects the same as it would be on appeal."

Prior to the adoption of the amendment of September 6, 1916, the Supreme Court had said that a petition to review and revise under Section 24b and an appeal under Section 24a were exclusive, and not

cumulative; that where a party had a right to review and revise under Section 24b, he did not also have a right to appeal under Section 24a. In the general law and equity practice frequently an appeal was taken when it should have been a writ of error, or writ of error taken when it should have been appeal. Sometimes these were very close questions. Sometimes the proper procedure, whether of equity or of law, presented very close cases. Evidently this was the situation intended to be covered by the amendment of September 6, 1916, to the Judicial Code—Section 4 referred to.

During this same period mistakes had been made in seeking to obtain reviews by petition instead of appeal, and the clear distinction between the two procedures had been pronounced by the Supreme Court, and followed by the various Circuit Courts of Appeal of the United States.

Congress must be presumed to have known of this situation and that they must use language to include the separate statutory procedure of petitions to review and revise provided for in the bankruptcy act, if they intended Section 4 of the Act of September 6, 1916, to cover and include petitions to review and revise in bankruptcy. Yet, no such language is found in any part of the law. First, it was entitled "An Act to amend the Judicial Code; to fix the time when annual terms of the Supreme Court shall commence and further to define the jurisdiction of that court." The express language of this amend-

ment includes only appeals and writs of error which are the only established methods of appellate procedure under the general judicial code.

If the Act of September 6, 1916, was intended to cover and protect against mistakes in the general appellate procedure under the general judicial code, how can judicial construction extend that meaning without any words to express it, to take in the statutory bankruptcy procedure of petitions to superintend and revise, with its special and even informal and summary procedure?"

Appeals in equity and writs of error in law serve the same purpose, in their respective procedures, to accomplish review in the appellate court and give practically the same jurisdiction involving law and facts; and they can well be used interchangeably; whereas the petition to review under the bankruptcy act presents only a question of law upon the particular facts stated in the petition.

The Bankruptcy Act in Sections 24a, 24b and 25a, provides three classifications of the questions arising in bankruptcy litigation and specifies the method by which a case in each class shall be carried to a higher court for review.

Questions germane to, arising in, and properly parts of bankruptcy proceedings are provided for by sections 24b and 25a. The former section, 24b, provides generally that questions of bankruptcy proceedings shall be carried up by petition to review and revise. The latter section, 25a, in a sense re-

moves from the operation of section 24b, three classes of questions. These three classes, while questions of bankruptcy which, but for Section 25a would be reviewable by petition, by Section 25a are made appealable. These three are: Action of the court in declaring or refusing to declare one a bankrupt; action of the court in discharging or refusing to discharge a bankrupt; and for allowances or refusal to make allowances of claims over $500. These three classes of cases, while of the same general class as those reviewable by petition under 24b, are removed from the general class, and made the subject of this special section, 25a, and are thus made reviewable by appeal.

The third section above referred to is Section 24a. This provides that all questions relating to controversies arising during the course of bankruptcy proceedings shall be taken up on appeal. It is conceded by the Circuit Court of Appeals in its opinion in the instant case that in this class fall controversies between the trustee and third-party claimants to property, etc., in the hands of the trustee. Such is the present case.

Although this is true, the respondent herein attempted to have this question reviewed by a petition to review and revise. It was your petitioners' position that the wrong remedy was pursued and that for that reason the Circuit Court of Appeals acquired no jurisdiction.

The Circuit Court of Appeals recognized the fact that the wrong remedy was pursued, but assumed jurisdiction on the grounds that Sec. 4 of the corrective statute of September 6, 1916 (39 Statutes at Large, p. 726; Comp. St. § 1649a) applies and corrects the mistaken remedy. This section, in harmony with the simplified forms under the various codes, provides that no case shall be dismissed for the reason that an appeal was prosecuted when the proper remedy was a writ of error, and that none should be dismissed when a writ of error was prosecuted when an appeal was the correct remedy. The Circuit Court cited no authority for this view, and all the decided cases since the passage of the act in question indicate that it was never intended to apply to bankruptcy proceedings, for which a separate code, in a sense, is provided.

Due to the uncertainty in the minds of many members of this bar, as to which is the proper remedy in a given case, it has been rather common practice, to go to the higher court, both by appeal, and by petition to review and revise. When this is done the practice is to dismiss the improper remedy, and to consider the case on the proper one. The following are cases where this was done, all of the cases being subsequent to the passage of the curative act:

In re Consumers' Packing Co. (1920), 268 Fed. 198;

Griffin v. Lenhart (1920), 266 Fed. 675, also 671;
Feder v. Goetz (1920), 264 Fed. 619;
In re Toole (1920), 250 Fed. 195;
In re H. L. Herbert & Co. (1920), 263 Fed. 351;
In re Wood (1921), 278 Fed. 355;
In re B. & B. Glove Corp. (1922), 279 Fed. 372;
Stokes v. Sedberry (1921), 275 Fed. 894;
Bear v. Liberty National Bank of Roanoke, Va. (1922), 285 Fed. 703, also 706;
National Discount Co. (1921), 272 Fed. 570;
In re Western Rope & Mfg. Co. (1923), 298 Fed. 926;
In re Geo. W. Cowen Co. (1923), 289 Fed. 192;
Blanke Mfg. Co. v. Craig (1923), 287 Fed. 345;
In re Rasmussen (1923), 287 Fed. 860;
Duncan v. Johnson & Co. (1925), 3 Fed. (2nd) 422;
In re L. M. Axle Co. (1925), 3 Fed. (2nd) 581;
People's Natl. Bank of Strasburg, Va., v. Green (1924), 296 Fed. 294;
Epley v. Baylor (1923) 293 Fed. 306;
Mohler v. Morris (1923), 291 Fed. 571;

In re Baltimore Pearl Hominy Co. (1925), 5 Fed. (2nd) 553;

In re Grotton Laundry Service, Inc. (1925) 5 Fed. (2nd) 63;

Goldstein v. Johnson (1925), 3 Fed. (2nd) 228.

In all of the above cases it is impliedly held that the two remedies, by appeal, and by petition to review and revise, are mutually exclusive, one of the other. In the following cases, it is expressly held that they are mutually exclusive:

In re Baltimore Pearl Hominy Co. (1925), 5 Fed. (2nd) 553;

In re Grotton Laundry Service, Inc. (1925), 5 Fed. (2nd) 63;

Goldstein v. Johnson (1925), 3 Fed. (2nd) 228;

In re B. & B. Glove Corp. (1922), 279 Fed. 372;

In re Parker (1921), 283 Fed. 404;

Duncan v. Johnson (1925), 3 Fed. (2nd) 422;

In re L. M. Axle Co. (1925), 3 Fed. (2nd) 581;

People's Natl. Bank of Strasburg, Va., v. Green (1924), 296 Fed. 294;

Eppley v. Baylor (1923), 293 Fed. 306;

National Discount Co. (1921), 272 Fed. 570.

The following cases, in their respective holdings, decide the question which was before the Circuit Court of Appeals, and in the light of these decisions, the Court of Appeals erred in assuming jurisdiction on petition to review and revise, of a question properly reviewable only by appeal.

The most recent case directly in point is that of *In re A. E. Richardson Co.* (1924), 3 Fed. (2nd) 600. The question sought to be reviewed was an order disallowing a claim of more than $500. By Section 25a such a question was made reviewable by appeal. Review was sought by a petition to review and revise. The petition was dismissed, the court holding that the question could be presented by appeal alone, and that petition was the wrong remedy.

In *In re Reilly* (1919), 258 Fed. 121, an appeal was taken from an order requiring a party to pay a bid made at a bankruptcy sale. The court held that the question should have been presented by petition; that appeal was the wrong remedy; and that the appeal must be dismissed.

In *Horton v. Mendelsohn* (1918), 249 Fed. 185, an appeal was taken from a rule to show cause why the petitioner should not be adjudged guilty of contempt. The court held that such a question could be presented only by petition under Section 24b, and the appeal was dismissed.

In *Frederick v. Silverman* (1918), 250 Fed. 75, by petition to review and revise, a turn over order was sought to be reviewed. The court held that such

order could be reviewed only by appeal and that therefore the petition would have to be dismissed.

In *In re Craig Lumber Co.* (1920), 266 Fed. 692, by a petition to review and revise, an allowance of a claim of over $500 was sought to be reviewed. The court held that such a question was appealable under Section 25a, and that appeal under that section was the exclusive remedy. The petition was dismissed.

A case in conflict with the holding of the Court of Appeals in the case at bar and one which can not be reconciled in any way is that of *In re Thompson* (1920), 264 Fed. 913. In that case the question was taken up both by appeal and by petition. The court first decided that the question was properly reviewable only by appeal. The appeal, however, had not been taken in time. For that reason the appeal was dismissed. The petition was dismissed because the matter was reviewable only by appeal. In that case, in spite of the fact that both remedies were pursued, the merits of the case were not passed upon, and for the reason, that the court recognized the fact that the remedies by appeal and by petition are mutually exclusive and are not interchangeable. If the curative statute by virtue of which the Court of Appeals assumed jurisdiction in the case at bar, is applicable to cases in bankruptcy, the court in that case would have held, that although the question was properly appealable, the court might acquire jurisdiction on petition, by virtue of the curative

statute. But the court did not do this. Both appeal and petition were dismissed, and the distinction between them was preserved.

In *Henkin v. Fousek* (1920), 267 Fed. 557, an appeal was taken to review a contempt order. The question was held reviewable only by petition, under Section 24b, and the appeal was dismissed for want of jurisdiction.

All of the cases above cited were decided after the enactment of the Act of Sept. 6, 1916, yet in not one of these cases was the act applied. In every case, save only the case at bar, the courts of the United States have uniformly held that where a question properly reviewable by petition is sought to be reviewed by appeal, the appeal must be dismissed and where a petition is improperly employed, it must be dismissed.

Ganzon v. Compania, 245 U. S. 86, holds that the differences between appeals and writs of error were not abolished by Section 4 of the Act of September 6, 1916, *supra.*

In *Duryea Power Co. v. Sternbergh*, 218 U. S. 299, this court made clear and certain the distinction between appeals, as allowed under 24a, and petitions to review and revise, as under 24b. In that case it is held that a petition can not be treated as an appeal and the reason given is that on appeal the jurisdiction of the Circuit Court of Appeals is broader than on petition to review and revise.

This court, in *Matter of Loving*, 224 U. S. 183, held that where adverse interests, in bankruptcy, are involved, the question can not be reviewed by petition to review and revise. This case has been neither repealed, disapproved nor criticized. The decision of the United States Circuit Court of Appeals for the Seventh Circuit, in the case now being reviewed, is in conflict with that in the Matter of Loving, *supra*.

Vesting of Inchoate Interest of Wife, in Real Estate Owned by Bankrupt Husband, at Date of Adjudication.

The remaining errors relied on, numbers 6 to 11 inclusive, are on the merits, and are argued together.

What effect does the death of the wife, living at date of the adjudication in bankruptcy and appointment of the trustee in bankruptcy, have upon her dower or other marital interest in the lands of her bankrupt husband, presumed to have vested in her by operation of law as of the date of the adjudication under the provisions of the Bankruptcy Act, in a case in which the death of the wife takes place before any sale of the lands is made?

The District Court held that the inchoate interest of the wife having become a vested interest, an absolute estate, an unconditional and indefeasible

fee, it passed like her other separate estate, by the terms of her will, to Harold Taylor, her trustee.

The Circuit Court of Appeals in its opinion, said:

> "We are of opinion that on the death of the wife all her right in this property was extinguished."

The common law dower interest of a wife, which on the death of her husband ripened into a vested life estate in one-third of the real estate, has been abolished in Indiana (Sec. 3013 Burns' 1914, Sec. 2639 R. S. 1881), and in its place has been substituted what is known as the wife's inchoate interest, which, on the death of the husband ripens into a fee in one-third, one-fourth or one-fifth of the realty, depending on the quantum thereof. (Sec. 3014, Burns' 1914, Sec. 2640 R. S. 1881. Appendix 49-50.)

It is further provided by statute that this inchoate interest of the wife shall not be alienable or defeasible, except with her assent, and her assent thereto must be acknowledged in the form and manner prescribed by law. (Sec. 3037, Burns' 1914, Sec. 2660, R. S. 1881. Appendix 50.)

It is well settled, both in the Federal courts and in the state courts of Indiana, that the dower right or inchoate interest of a wife in the lands of her bankrupt husband does not pass to the trustee in bankruptcy.

Porter v. Lazear, 109 U. S. 84;

In re Hays (6th Circuit), 181 Fed. 674, 676;

Marine National Bank v. Swigert (6th Circuit), 262 Fed. 254;
Thomas v. Woods (*8th Circuit*), 173 Fed. 585;
Harlin, Guardian, v. American Trust Co., Trustee in Bankruptcy, 67 Ind. App. 213, 218.

In this case, it is the contention of your petitioners that the title to the real estate owned by the bankrupt on the date of adjudication, vested on that date, "by operation of law" to use the language of the Bankruptcy Act, in the trustee in bankruptcy, as to that interest in the land which the bankrupt could have conveyed, and that on that date, by the same "operation of law," there became vested in the wife, whatever inchoate interest she held, whether the quantum is defined by common law or by statute.

In the opinion of the Circuit Court of Appeals in the case at bar the Indiana Judicial Sales Act (Sec. 3052 Burns' 1914, Sec. 2669 R. S. 1881) is often referred to, and the judgment of that court rests on the theory that the inchoate interest of the wife could ripen into an absolute fee, only (1) on the death of her husband, or (2) on judicial sale. the death of her husband, or (2) on judicial sale, evidently meaning that it required an actual sale by the Trustee, and ignoring the provisions of 70a(5) that the title rests by operation of law as of date of adjudication; that the line of cleavage, when the rights of parties become fixed is the time of filing of the petition. Sec. 6 of the act.

White v. Stump, 266 U. S. 310, 313.

The question of the wife's right to her statutory interest is best solved by first determining what property and what title the trustee takes under sections 6 and 70a (5) of the Bankruptcy Act.

This Court early held that it was proper to recognize the State laws as to the wife's dower.

Hanover National Bank v. Moyses, 186 U. S. 181, 190.

By the Indiana statutes already quoted, the dower right is a fee simple one-third, which may be reduced to a one-fifth interest as against creditors where the real estate is of more than $20,000.00 in value.

The rule applies just the same to the question, regardless of whether a particular State law gives the wife the common law dower interest or the statutory one-third in fee, as in Indiana.

The case of *Hanover v. Moyses* has been followed and applied by Circuit Courts of Appeal in various Circuits.

Thomas v. Woods, 173 Fed. 585, 591;
In re Hayes, 181 Fed. 678.

The Bankruptcy Act is intended to administer the bankrupt's estate as it stood, and as the rights and interests, exemptions, dower and lien holders may stand at a particular point of time.

How long must a wife survive adjudication to enable her to claim her statutory interest? Would not such attempted construction make it a plain gamble in attempting to take, appraise and sell the

wife's interest? Such construction in every way violates the construction placed upon the Bankruptcy Act of this Court that there is a line of cleavage, a point of time, when the rights of the various parties and interests become fixed and are to be determined. And this is regardless of the Judicial Sales Act, which we contend was intended to apply to single sales upon executions, and under which single sales would be considered seaparately. Whereas the bankruptcy act is intended to be a general administration of the bankrupt's entire estate, as though he were *civiliter mortuus.*

That the bankrupt's interest in his lands passes to his trustee "by operation of law" under Section 70a of the Bankruptcy Act can not be disputed. It is anomalous that on adjudication of bankruptcy, two-thirds, three-fourths, or four-fifths of the lands of the bankrupt may pass "by operation of" the Bankruptcy "law," yet, the remaining one-third, one-fourth or one-fifth, reserved to the wife by the state statutes, does not pass to her.

What would be the status of that quantum of the realty, representing the wife's interest, if it did not vest on adjudication? It would not remain in the bankrupt, for all his interest passes to the Trustee. It does not pass to the Trustee, as is well settled. Surely none will argue that the fee would remain in abeyance because the law abhors such a situation of uncertainty.

A case strikingly similar to the one here being reviewed was recently considered by the Appellate

Court of Indiana. It arose in the case of *Harlin, Guardian, v. American Trust Company, Trustee, supra.* The facts involved were as follows: The bankrupt on date of adjudication owned certain realty. His wife had in no way conveyed or released her rights therein. She was subsequently put under guardianship, as an insane. The trustee was unable to sell that interest in the realty which passed to it on adjudication. Accordingly the trustee sued the wife's guardian for partition. There had been no sale. The court held: That the wife's inchoate interest is not affected by a judgment to which she was not a party; that the wife's inchoate interest becomes absolute *on adjudication of bankruptcy*, and that thereupon she is entitled to partition; and, that a sale is not necessary to make the wife's interest an absolute fee.

This case is the leading case on the subject in Indiana, and although cited to the Circuit Court of Appeals, it was not mentioned in that court's opinion. It is true that the case mentions the Judicial Sales Act, but it is also true, that the question decided was that on adjudication of bankruptcy, the wife's title became an absolute fee, *although there had been no sale.*

Clearly this case was disregarded by the Circuit Court of Appeals.

The United States Circuit Court of Appeals for the Seventh Circuit, by its judgment reversing the District Court, held that that portion of the proceeds of the sale of the realty, representing the wife's inchoate interest, did not pass to her.

The title to the real estate could have gone to but two persons—the trustee in bankruptcy or Mary E. Erskine, the wife of the bankrupt. If the wife of a bankrupt did not take the proceeds representing her inchoate interest, then these proceeds must have passed to the trustee in bankruptcy.

It is fundamental that the source of the title or interest which the trustee in bankruptcy takes is the bankruptcy act itself.

It is provided by Section 70a (5), Act July 1, 1898, c. 541; 30 Stats. at L. 565; U. S. Comp. Stats. 8654, that:

> "The trustee of a bankrupt, upon his appointment and qualification, shall * * * be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, to all * * * property, which, prior to the filing of the petition, he could by any means have transferred, or which might have been levied upon and sold under judicial process against him".

The only right or interest which the trustee in bankruptcy under any state of facts might claim in the real estate of the bankrupt is derived solely from the above quoted act.

It is specifically provided by Section 3037 Burns' Ind. Ann. Stats. 1914; Sec. 2660 R. S. 1881, that neither an act or conveyance of the husband without the assent of his wife, nor any sale, disposition, transfer or incumbrance of the husband's realty, nor any decree or execution to which she shall not be a party, shall prejudice or extinguish the inchoate rights of the wife in the realty of her husband.

Prior to adjudication of bankruptcy on December 20, 1921, Mary E. Erskine had joined in no conveyance of her husband's realty and by no act had she released or extinguished her inchoate right therein. Further, she was not a party in any way to the petition in bankruptcy of Wilbur Erskine, her husband.

It is held in *Higgins v. Ormsby* (1901), 156 Ind. 82, that a judgment against the husband on his sole debt or obligation does not constitute a lien on the inchoate interest of the wife in the realty of her husband.

By the provisions of the bankruptcy act herein above quoted the only property which vested in the trustee in bankruptcy is that property which prior to the filing of the petition in bankruptcy the bankrupt might have sold, or which might have been sold under execution against him. The Indiana statute just cited provides that the bankrupt by no act of his could have defeated the inchoate interest of his wife. The case of *Higgins v. Ormsby, supra*, holds that a judgment against the husband alone does not attach to the wife's inchoate interest.

By reason of the statute and by judicial decision the facts that a husband by his own act can not divest the wife's inchoate interest and that that interest can not be reached by a judgment and execution against the husband, are no longer open questions.

In view of this settled state of the law in Indiana, Section 70a (5) of the Bankruptcy Act above quoted, can only mean, when applied to the lands owned

by Wilbur Erskine on December 20, 1921, the date of adjudication of bankruptcy, that the trustee in bankruptcy Harry W. Voss did not take the inchoate interest held by Mary E. Erskine in those lands, for that interest was an interest which the bankrupt could not by any means have transferred prior to the filing of the petition, and which could not have been sold under judicial process against him.

Petitioners pray that the judgment of the Circuit Court of Appeals may be held void, and that a mandate be issued to the court below to set aside and vacate the judgment, and that the decision and judgment of the Circuit Court of Appeals in all things be reversed, and the judgment of the District Court affirmed, with costs to petitioners.

Respectfully submitted,

HAROLD TAYLOR,

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Attorneys for Petitioners.

APPENDIX.

Act of January 28, 1915, chapt. 22, sec. 4; 38 Stats. at L. 804, as amended by the Act of September 6, 1916, chapt. 448, sec. 3; 39 Stat. at L. 727; U. S. Comp. Stats., sec. 1120a; (Jud. Code, Sec. 128, amended):

> "Judgments and decrees of the circuit courts of appeals in all proceedings and causes arising under 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July first, eighteen hundred and ninety-eight, and in all controversies arising in such proceedings and causes; * * * and, also, in all causes arising under any amendment or supplement to any one of the aforementioned acts which has been heretofore or may hereafter be enacted, shall be final, save only that it shall be competent for the Supreme Court to require by certiorari, upon the petition of any party thereto, that the proceeding, case, or controversy be certified to it for review and determination, with the same power and authority and with like effect as if taken to that court by appeal or writ of error."

Act of February 13, 1925, c. 229, sec. 14; 43 Stats. at L. 941:

> "That this Act shall take effect three months after its approval; but it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to a review, or the mode or time for exercising the same, as respects any judgment or decree entered prior to the date when it takes effect."

Act of September 6, 1916, c. 448, sec. 4; 39 Stats. at L. 727; U. S. Comp. Stats., sec. 1649a:

> "No court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mistake or error occurs it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed."

Act of July 1, 1898, c. 541, sec. 24a; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608:

> "The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia."

Act of July 1, 1898, c. 541, sec. 24b; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608:

> "The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their ju-

risdiction. Such power shall be exercised on due notice and petition by any party aggrieved"

Act of July 1, 1898, c. 541, sec. 25a; 30 Stats. at L. 553; U. S. Comp. Stats., sec. 9608:

> "That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, towit:
>
> (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt;
>
> (2) From a judgment granting or denying discharge; and
>
> (3) From a judgment allowing or rejecting a debt or claim of five hundred dollars or over.
>
> Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be."

Act of July 1, 1898, c. 541, sec. 70a; 30 Stats. at L. 565; amended February 5, 1903, c. 487, sec. 16; 32 Stats. at L. 800; U. S. Comp. Stats. 9654:

> "The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to

his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property."

Section 3013, Burns' Ind. Ann. Stats. 1914; Sec. 2639 R. S. 1881:

"Tenancies by the courtesy and in dower are hereby abolished."

Section 3014, Burns' Ind. Ann. Stats. 1914; Sec. 2640 R. S. 1881:

"If a husband die testate or intestate, leaving a widow, one-third of his real estate shall descend to her in fee-simple, free from all demands of creditors: Provided, however, That

where the real estate exceeds in value ten thousand dollars, the widow shall have one-fourth only, and where the real estate exceeds twenty thousand dollars, one-fifth only, as against creditors."

Section 3029, Burns' Ind. Ann. Stat. 1914; Sec. 2652 R. S. 1881 :

"A surviving wife is entitled, except as in section 17 (Sec. 2483) excepted, to one-third of all the real estate of which her husband may have been seized in fee-simple at any time during the marriage, and in the conveyance of which she may not have joined, in due form of law, and also of all lands in which her husband had an equitable interest at the time of his death: Provided, That if the husband shall have left a will, the wife may elect to take under the will instead of this or the foregoing provisions."

Section 3037, Burns' Ind. Ann. Stats. 1914; Sec. 2660 R. S. 1881:

"No act or conveyance, performed or executed by the husband without the assent of his wife, evidenced by her acknowledgment thereof in the manner required by law; nor any sale, disposition, transfer or incumbrance of the husband's property, by virtue of any decree, execution or mortgage to which she shall not be a party (except as provided otherwise in this act), shall prejudice or extinguish the right of the wife to her third of his lands or to her jointure, or preclude her from the recovery thereof, if otherwise entitled thereto."

Section 2864, Burns' Ind. Ann. Stats. 1914; Sec. 2502 R. S. 1881:

> "If the decedent leave a widow, and the real estate owned by him at his death shall not exceed ten thousand dollars in value, the court shall direct the sale of the undivided two-thirds parts thereof for the payment of said debts and liabilities; and if the value thereof exceed ten thousand dollars, and do not exceed twenty thousand dollars, the court shall order the sale of the undivided three-fourths thereof; and, if it exceed in value twenty thousand dollars, the undivided four-fifths thereof, for said purpose."

Section 3052, Burns' Ind. Ann. Stats. 1914; Sec. 2669 R. S. 1881:

> "In all cases of judicial sales of real property in which any married woman has an inchoate interest by virtue of her marriage, where the inchoate interest is not directed by the judgment to be sold or barred by virtue of such sale, such interest shall become absolute and vest in the wfe in the same manner and to the same extent as such inchoate interest of a married woman now becomes absolute upon the death of the husband, whenever, by virtue of said sale, the legal title of the husband in and to such real property shall become absolute and vested in the purchaser thereof, his heirs, or assigns, subject to the provisions of this act, and not otherwise. When such inchoate right shall become vested under the provisions of this act, such wife shall have the right to the immediate possession thereof; and may have partition, upon agreement with the purchaser, his heirs or assigns, or upon

demand, without the payment of rent, have the same setoff to her."

Section 3053, Burns' Ind. Ann. Stats. 1914; Sec. 2670 R. S. 1881:

"When not applicable—The provisions of this act shall not apply to sales of real estate upon judgments rendered prior to the taking effect of this act; nor to any sale of real property of the value of twenty thousand dollars and over; nor to the sale of such real property of the aggregate value of twenty thousand dollars and over—except so much of such real property as shall not exceed in value the sum of twenty thousand dollars."

Section 3054, Burns' Ind. Ann. Stats. 1914; Sec. 2671 R. S. 1881:

"Who inherits from wife.—If any married woman shall die, holding real property vested in her by the provisions of this act, during the existence of the marriage in virtue of which she received the same, the whole of such real property shall descend to her surviving husband; and if any woman shall marry a second or any subsequent time, holding real property vested in her by the provisions of this act, such woman may not, during such second or subsequent marriage, either with or without the assent of her husband, alienate such real estate; and if, during such marriage, such wife shall die, such real estate shall descend to her children by the marriage in virtue of which such real estate came to her, if any there be."

Section 3055, Burns' Ind. Ann. Stats. 1914; Sec. 2672 R. S. 1881:

> "Price on execution sale.—No real property in which any married woman holds such inchoate interest as is provided for in this act, liable to be sold with benefit of appraisement laws of the state, shall be sold on any execution or order of sale issued out of any court for less than four-ninths of the appraised cash value thereof, exclusive of liens and incumbrances."

Act of February 13, 1911, c. 47, Sec. 1, 36 Stat. at L., 901 U. S. Comp. Stat., Sec. 1656.

> "Printed transcript of record on appeal to circuit court of appeals—In any cause or proceeding wherein the final judgment or decree is sought to be reviewed on appeal to, or by writ of error from, a United States circuit court of appeals the appellant or plaintiff in error shall cause to be printed under such rules as the lower court shall prescribe, and shall file in the office of the clerk of such circuit court of appeals at least twenty days before the case is called for argument therein, at least twenty-five printed transcripts of the record of the lower court, and of such part or abstract of the proofs as the rules of such circuit court of appeals may require, and in such form as the Supreme Court of the United States shall by rule prescribe, one of which printed transcripts shall be certified under the hand of the clerk of the lower court and under the seal thereof, and shall furnish three copies of such printed transcript to the adverse party at least twenty days before such argument: Provided, That either the

court below or the circuit court of appeals may order any original document or other evidence to be sent up in addition to the printed copies of the record or in lieu of printed copies of a part thereof; and no written or typewritten transcript of the record shall be required."